

Martin J. Brill (Calif. Bar No. 53220)
Krikor J. Meshefejian (Calif. Bar No. 255030)
LEVENE, NEALE, BENDER, YOO & BRILL, L.L.P.

10250 Constellation Blvd., Suite 1700
Los Angeles, California 90067
Telephone: (310) 229-1234
Facsimile: (310) 229-1244

mjb@lnbyb.com

*Counsel for Creditors Caldera Mineral Resources, LLC and Caldera Holdings, LLC
Pro Hac Vice Application Approved*

Christopher A. Grivakes (Calif. Bar No. 127994)

Affeld Grivakes Zucker LLP

2049 Century Park East, Suite 2460
Los Angeles, CA 90067
Telephone: (310) 979-8700
Facsimile: (310) 979-8701

*Counsel for Creditors Caldera Mineral Resources, LLC and Caldera Holdings, LLC
Pro Hac Vice Application Approved*

M. Darin Hammond – Bar No. 6741

SMITH KNOWLES, P.C.

2225 Washington Blvd., Suite 200
Ogden, UT 84401

Telephone: (801) 476-0303
Facsimile: (801) 476-0399

dhammond@smithknowles.com

Local Counsel for Creditors Caldera Mineral Resources, LLC and Caldera Holdings, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

In re **FEDERAL RESOURCES
CORPORATION and CAMP BIRD
COLORADO, INC.**

Debtors.

Jointly administered under
Bankruptcy Case No. 14-33427
(Chapter 11)
Judge Kevin R. Anderson

THIS DOCUMENT RELATES TO:

Both Debtors

**EMERGENCY MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE
PURSUANT TO 11 U.S.C. § 1104**

TABLE OF CONTENTS

I. INTRODUCTION..... 2

II. FACTUAL SUMMARY..... 3

A. Caldera Has A Substantial Security Interests To Protect..... 3

B. The Debtors Concealed The Nature And Purpose Of The Lease And Option To Purchase Agreement With Convicted Drug Dealer Richard Ciardo..... 3

C. The Debtors Concealed That Blum Personally Accepted Money From Ciardo..... 6

D. The Debtor CBCI Appointed Ciardo And Dodd To File A Marijuana Permit On Its Behalf..... 7

E. The Debtors Have Promised Water Rights To The Lessee That They Cannot Deliver 8

F. The Debtors Permitted A Convict to Cause Damage and to Steal..... 8

G. The Debtors Designed A Sale Of Equipment To (i) Avoid Professional Bidders And (ii) Ensure Ciardo Could Purchase At Below Market Rates 9

II. LEGAL ARGUMENT..... 10

A. Cause Exists To Appoint A Chapter 11 Trustee Because The Debtors Have Engaged In Fraud, Dishonesty and Gross Mismanagement, And Have Demonstrated Incompetence In Their Management Of The Debtors’ Bankruptcy Estates, And The Appointment Of A Credible Chapter 11 Trustee Is In The Best Interests Of Creditors..... 11

1. The Court Should Appoint A Trustee Because The Debtors Failed To Disclose Or Accurately Describe The Debtors’ Business Dealings With Mr. Ciardo 11

2. The Court Should Appoint A Trustee Because The Debtors Have Subjected The Debtors’ Estates To Potential Administrative Claims By Promising Water Rights To The Lessee That The Debtors Cannot Deliver 14

3.	The Court Should Appoint A Trustee Because The Debtors Permitted A Convict to Cause Damage and to Steal	14
4.	The Debtors' Secret Business Dealings With Mr. Ciardo Violates The Controlled Substances Act (CSA) And Constitutes Cause For The Appointment Of A Trustee	15
IV.	CONCLUSION	17

TABLE OF AUTHORITIES

	Page(s)
FEDERAL CASES	
<i>In re Arenas</i> , 514 B.R. 887 (D. Colorado 2014).....	15
<i>In re Colorado–Ute Electric Assn., Inc.</i> , 120 B.R. 164 (Bankr.D.Colo.1990).....	11
<i>In re Plaza de Retiro, Inc.</i> , 417 B.R. 632 (Bankr. D.N.M. 2009).....	10, 11
<i>In re Rent-Rite Super Kegs West Ltd.</i> , 484 B.R. 799 (D. Colorado 2012).....	15
<i>Monson v. DEA</i> , 522 F. Supp2d 1188 (D.N.D. 2007)	16
FEDERAL: STATUTES, RULES, REGULATIONS, CONSTITUTIONAL PROVISIONS	
30 CFR § 56.20001	17
11 U.S.C. § 363(b)	14
11 U.S.C. § 1104(a)	10
18 U.S.C. § 2(a)	16
21 U.S.C. § 812.....	16
21 U.S.C. § 846.....	16
21 U.S.C. § 856(a)(2).....	15
OTHER: STATUTES, RULES, REGULATIONS, CONSTITUTIONAL PROVISIONS	
C.R.S. § 12-43.3-307	16
Federal Mine Safety & Health Act of 1977	17
Public Law 91-173, § 4.....	17

Creditors Caldera Mineral Resources, LLC (“Caldera Resources”) and Caldera Holdings, LLC (“Caldera Holdings”, and collectively, “Caldera”) hereby file this Emergency Motion for the appointment of a chapter 11 trustee or trustees in the Chapter 11 bankruptcy cases of Federal Resources Corporation (“FRC”) and Camp Bird Colorado, Inc. (“CBCI”, and collectively with FRC, the “Debtors”). Emergency relief is requested, and required, in order to prevent the further gross mismanagement of the Debtors’ estate and fraud upon the Court, and to prevent any further theft of equipment from the Camp Bird Mine.

I. INTRODUCTION

1. The Debtors have engaged in the following wrongful conduct and gross mismanagement which require the immediate appointment of a trustee:

(a) The Debtors concealed from this Court that they entered into a written lease with a convicted drug dealer for the purpose of growing marijuana on the Camp Bird Mine property, mischaracterized the lease in its Disclosure Statement as being a “Water Lease”, and never obtained approval of the lease or March 2015 amendment thereto;

(b) The Debtors concealed that their principal, Bentley Blum, personally accepted money from the drug dealer at the time CBCI entered into the lease amendment;

(c) CBCI appointed the drug dealer as its authorized agent to apply for a marijuana permit on its behalf;

(d) The Debtors permitted a theft of Caldera’s equipment from the Camp Bird Mine property and damage to the equipment and the property which appear to have been perpetrated by the drug dealer; and

(e) The Debtors’ motion to sell personal property was designed so that their stalking horse bidder, the drug dealer, would acquire the equipment at below market prices, presumably to finance the illegal marijuana business.

2. The immediate appointment of a chapter 11 trustee is necessary to put a stop to

the above-referenced gross mismanagement and to prevent any further theft or gross mismanagement

II. FACTUAL SUMMARY

A. Caldera Has A Substantial Security Interests To Protect

3. Caldera has expended cash in excess of \$8,000,000 in the Camp Bird mining project in connection with Caldera's performance under that certain Mining Lease and Option to Purchase entered into with CBCI on September 20, 2012. Caldera purchased all of the equipment currently located at the Camp Bird property and made substantial improvements to the infrastructure. It was Caldera's employees who worked at the Camp Bird mine site. In conjunction with its investment, Caldera obtained and perfected a security interest in all CBCI's real and personal property. Thus, Caldera is one of the largest, if not the largest, creditors of the Debtors. (Bryan Decl., ¶ 2).

B. The Debtors Concealed The Nature And Purpose Of The Lease And Option To Purchase Agreement With Convicted Drug Dealer Richard Ciardo.

4. On December 28, 2014, **the day before the cases were filed**, the Debtors entered into a written "Lease and Option to Purchase Agreement" with Richard Ciardo (the "December 2014 Lease"). (Grivakes Decl., Ex. E).

5. Mr. Ciardo is a convicted drug dealer who was sentenced to four concurrent prison terms of 235 months (19.5 years) in 1994 for conspiring to possess and import into the United States a total of 14 kilograms of cocaine. (Grivakes Decl., Request for Judicial Notice, Ex. A, C at 0089).

6. The undisclosed purpose of the December 2104 Lease was to lease and then sell property to a marijuana business. On March 5, 2015, Mr. Ciardo wrote an email to the Debtors' principal, Bentley Blum, requesting that the December 2014 Lease be extended to a three-year term, provide the right to construct commercial buildings on the property, and contain an

acknowledgment from Mr. Blum that Mr. Ciardo would be sub-leasing to Elevated, LLC “*for a cannabis cultivation facility*”. (Grivakes Decl., Ex. F). Mr. Ciardo also indicated in his email that he was preparing a more formal executive summary with respect to his marijuana business. *Id.*

7. On March 16, 2015, the Debtors entered into “Amendment Number One” to the December 2014 Lease (the “Amendment”) which extended the term of the December 2014 Lease for the three years and permitted the construction of commercial buildings, as per Mr. Ciardo’s request set forth in his March 5, 2015 email to Mr. Blum. (Grivakes Decl., Ex. G). The Amendment does *not* contain an acknowledgement by the Debtors, as requested by Mr. Ciardo in his March 5, 2015 email to Mr. Blum, that Mr. Ciardo would be sub-leasing the property to Elevated, LLC “for a cannabis cultivation facility.”

8. A few days after the Amendment was executed, Mr. Ciardo prepared a more formal executive summary which states that “Elevated is a start-up legal marijuana cultivation operation *The greenhouse facility will be located at the historical Camp Bird Mine in Ouray County Colorado.*” It also states that “[t]he company *has leased a portion of the Camp Bird Mine property* including water rights in Ouray County, Colorado where the cultivation of the crop will be accomplished.” (emphasis added) (Grivakes Decl., Ex. H at 0121 and 0123).

9. On March 27, 2015, the Debtors filed a Disclosure Statement which falsely characterized the December 2014 Lease as being a “Water Lease.” The Debtors knew that the primary purpose of the lease was to provide property upon which to grow marijuana, with water use being a collateral or adjunct purpose. The Debtors further falsely represented in their Disclosure Statement that they were “in the process of finalizing an Amendment to the Water Lease that is expressly subject to the Bankruptcy Court’s approval.” (Grivakes Decl., Ex.B at 0027). The Debtors had executed the Amendment on March 16, 2015, eleven days prior to the filing of the Disclosure Statement. The Debtors have never submitted the December 2014 Lease

and Amendment to the Bankruptcy Court for approval.

10. On April 23, 2015, Ronald Goldberg sent an email to the Debtors' counsel David Leta attaching Mr. Ciardo's marijuana business plan for Mr. Leta's review and requesting a new lease for Mr. Ciardo. Mr. Leta responded by email that Mr. Goldberg's "instruction is different than what Richard said to me earlier today during our call", and further stated that the preparation of a new lease would "take some time and an expenditure of additional estate funds." (Grivakes Decl., Ex. I).

11. Sometime prior to October 20, 2015, Mr. Ciardo submitted the December 2014 Lease and Amendment to the Ouray County Land Use Department in connection with an application to grow marijuana at the Camp Bird property. On October 20, 2015, the Ouray County Land Use Department wrote Mr. Ciardo regarding the lease documents he had submitted in connection with his marijuana cultivation application. (Grivakes Decl., Ex. J).

12. On November 26, 2015, Mr. Ciardo signed a sub-lease to Elevated, LLC. (Grivakes Decl., Ex. K). The signature blocks for Elevated, LLC and for the Debtors remain blank. The sub-lease does *not* contain an acknowledgement by the Debtors, as requested by Mr. Ciardo in his March 5, 2015 email to Mr. Blum, that Mr. Ciardo would be sub-leasing the property to Elevated, LLC "for a cannabis cultivation facility." *Id.*

13. On November 27, 2015, the Debtors entered into a new written "Lease and Option to Purchase Agreement" with Mr. Ciardo (the "November 2015 Lease"). (Grivakes Decl., Ex. L). There is no reference in the lease to the marijuana business. The November 2015 Lease provides that Mr. Ciardo may lease 28 acres and water rights for \$5,000 per month and may sub-lease the leased property.

14. On November 28, 2015, Steven Dodd submitted to Ouray County a new marijuana application for Elevated, LLC. The application form requires listing all persons involved in the ownership structure or who will be profiting from the business in any way.

(Bryan Decl., Ex. C, p. 0055). The new application falsely represents to Ouray County that Mr. Ciardo is not involved in the transaction. *Id.* Mr. Ciardo is clearly involved in the deal because he personally signed the lease with the Debtors (Grivakes Decl., Exs. E and L) and represented to the Debtors that he would “invest \$485,000 in a plan to set up a cultivation facility.” (Grivakes Decl., Ex. F).

15. On December 14, 2015, in an apparent attempt to cover its tracks the Debtors filed an Amended Agreement For Sale of Equipment [Doc 256] which adds a paragraph that was not in the original sale agreement entitled “Preliminary Approval of Lease/Option” that provides that the Debtors “will file a motion with the Bankruptcy Court requesting authority to enter into the Lease/Option Agreement...” (identified hereinabove as the November 2015 Lease). The Amended Agreement also contains a paragraph entitled “Purchasers Representations” wherein the Purchaser “*represents and warrants to Debtors that neither Purchaser, any designee of Purchaser or the Tenant under the Lease is (a) engaged in any activity that is illegal under federal law, (b) intends to engage in any activity that is illegal under federal law, or (c) is an officer, director, manager, operator or owner of any entity that Purchaser or Tenant knows to be engaged in any activity that is illegal under federal law.*” (emphasis added). The Debtors’ knew that this representation was false when they submitted it to this Court. The Debtors were fully aware that Mr. Ciardo intended to grow marijuana on the Camp Bird property and are presumed to know that marijuana cultivation is illegal under federal law.

C. The Debtors Concealed That Blum Personally Accepted Money From Ciardo.

16. On March 2, 2015, Mr. Ciardo sent a wire to Mr. Blum, care of the “Blum Technology Trust” (“Trust”), in the amount of \$15,000 and a second wire for \$10,000 to Hyperion 2 Corp. (“Hyperion”). (Grivakes Decl., Ex. M). The \$15,000 wire transfer to Mr. Blum coincides with the Debtors’ entering into the Amendment to the December 2014 Lease a few days later.

17. On April 1, 2015, in an effort to conceal what appears to be a diversion of funds from the estate, Mr. Blum signed a loan agreement purporting to memorialize a \$25,000 loan from Mr. Ciardo to Kion Defence Technologies, Inc. (“Kion”). (Grivakes Decl., Ex. N). However, the agreement is between the Trust and Kion, was signed only by Blum, and does not even contain a signature block for Mr. Ciardo. Furthermore, the agreement states that Mr. Ciardo “will lend” Kion the sum of \$25,000 even though he had already wired \$25,000 to the Trust and Hyperion some 30 days earlier. There is no evidence that Mr. Ciardo ever entered into a written loan agreement with anyone.

D. The Debtor CBCI Appointed Ciardo And Dodd To File A Marijuana Permit On Its Behalf.

18. On October 20, 2015, Ouray County responded to Mr. Ciardo’s application for a marijuana license and noted that the application “must be made (i.e. signed) by the landowner, or alternatively, current landowner must sign an *agent authorization form*.” (emphasis in original) (Grivakes Decl., Ex. J).

19. On November 29, 2015, the President of CBCI, Scott A. Butters, signed an agent authorization form appointing Mr. Ciardo as CBCI’s authorized agent for purposes of the marijuana permit. (Grivakes Decl., Ex. O at 0216). On that same date, Mr. Butters also signed an agent authorization form appointing Mr. Dodd in the same capacity. (Grivakes Decl., Ex. O at 0217). The form appointing Mr. Dodd also references his company Elevated, LLC.

20. The agent authorization forms establish that CBCI was applying for its own marijuana permit with Mr. Ciardo and Mr. Dodd merely acting as its agents: Mr. Butters signed the forms attesting that “I/we, the undersigned owner(s) of the following described real property located in Ouray County, Colorado hereby authorize ... [Richard Ciardo/Steven Dodd] ... *to act in my/our behalf in applying for permits from the County of Ouray*.” (emphasis added). *Id.*

21. CBCI knew that it was applying for a marijuana license. The authorization forms

signed by Mr. Butters state: “By my signature I hereby certify that I have read any applications and other materials completely and that all information provided is correct to the best of my knowledge.” *Id.*

E. The Debtors Have Promised Water Rights To The Lessee That They Cannot Deliver.

22. The Debtors’ lease agreements with Mr. Ciardo promise the delivery of water rights that the Debtors cannot legally deliver. The lease agreements attach the 1941 water rights decree. (Grivakes Decl., Ex. E at 0110). As the Debtors know, the 1941 decree was superseded by subsequent court order in 1989. On May 5, 1989, the District Court, Water Rights Division, declared that the Debtors had abandoned water rights and were limited to specified rights for “domestic (including fire protection), mining and milling uses”. (Bryan Decl., Ex. A). The current rights do not include commercial agricultural uses, including commercial marijuana cultivation.

23. The Debtors accepted Mr. Ciardo’s money for a lease and water rights that they are legally prohibited from delivering. In addition to expending estate funds in connection with a business venture whose very purpose cannot be accomplished, the Debtors have subjected the estate to a potential claim by Mr. Ciardo for fraudulent misrepresentation.

F. The Debtors Permitted A Convict to Cause Damage and to Steal.

24. On or about March 30, 2015, Caldera discovered that certain of its personal property had been stolen from the Camp Bird mine and that various fixtures and infrastructure had been damaged. Caldera has calculated that the amount of the stolen equipment is approximately \$44,612.91. (Bryan Decl., ¶ 4, Ex. B). The theft was reported to the Debtors’ counsel. (Thompson Decl., Ex. A). The Debtors never reported the theft to the Bankruptcy

Court. The Debtors' President, Mr. Butters, upon being initially told about the theft, stated that the lessee was told that they weren't supposed to take anything. (Williams Decl., ¶ 2).

25. The lessee of the property (Mr. Ciardo) appears to have been the thief and the one causing the damage to the fixtures and infrastructure. He and his associates were the only persons who gained access to the property between December 2014 and March 30, 2015 when the theft was reported to the Ouray County Sheriff and to the Debtors. (Thompson Decl., ¶ 7, Exs. B to E). Mr. Ciardo took photographs at the Camp Bird mine site on March 26, 2015 and a video on March 27, 2015 showing he had a trailer, just a few days before the theft was reported. (Thompson Decl., Ex. D, E). On April 2, 2015, Mr. Ciardo sent an email containing photos of the equipment at Camp Bird. (Grivakes Decl., Ex. R).

26. On May 12, 2015, Caldera attended an inspection of the property with the EPA and Debtors' counsel and discovered that Mr. Ciardo's gang had caused damage when snowplowing over areas they were not familiar with, including to the gate, safety barriers, utility lines, bridge railing, and footings. (Thompson Decl., ¶ 5). Caldera also discovered that new locks had been put on the Debtors' gate, on a shop building where Caldera stored some of its personal property, and on conex boxes containing Caldera's personal property. At a subsequent inspection on May 20, 2015, the Debtors' counsel had keys to the new locks. (Thompson Decl., ¶ 6).

27. Caldera has just recently discovered that Mr. Ciardo is once again at the property. On November 22, 2015, Mr. Ciardo sent emails attaching photos of equipment located at the property. (Grivakes Decl., Ex. P). On December 11, 2015, a crew of men was seen on the property. (Williams Decl., ¶ 3). This raises the fear that more equipment may be stolen by Mr. Ciardo.

G. The Debtors Designed A Sale Of Equipment To (i) Avoid Professional Bidders And (ii) Ensure Ciardo Could Purchase At Below Market Rates.

28. On November 4, 2015, the Debtors filed a motion for sale of personal property. The motion failed to describe the property with adequate specificity so that a professional equipment buyer could evaluate the equipment and place a bid. A leading used mining equipment dealer who regularly makes equipment bids in bankruptcy sales has confirmed that it is impossible to value the equipment based on the list attached to the Debtors' motion such that a professional bidder would not be able to participate in the auction. (Laeding Decl., ¶ 3).

29. The sale appears to have been designed so that Mr. Ciardo, who made a stalking horse bid for \$87,000, would have an unfair advantage over other bidders and obtain the property at below market value, presumably to invest in the marijuana business. Mr. Ciardo was given an unfair advantage because he was allowed to view the equipment in person on numerous occasions, and was provided with photos by the Debtors' counsel in June 2015. (Grivakes Decl., Ex. Q). Mr. Ciardo's bid of \$87,000 is well below the value of the equipment for mining purposes since the replacement cost is approximately \$1,500,000. (Bryan Decl., ¶ 5).

II. LEGAL ARGUMENT

30. 11 U.S.C. § 1104(a) provides that “[a]t any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.” 11 U.S.C. § 1104(a).

31. Under subsection a(1), appointment is mandatory when cause is found. *See In re*

Plaza de Retiro, Inc., 417 B.R. 632, 641-43, (Bankr. D.N.M. 2009), citing *Oklahoma Refining Co. v. Blaik (In re Oklahoma Refining Co.)*, 838 F.2d 1133, 1136 (10th Cir.1988)(Once cause is found the Court has no discretion and must appoint a trustee.)

32. “Subsection (a)(2) contains a flexible standard that allows a court look to the practical realities and necessities and appoint a trustee when it is in everyone's best interests.” *In re Plaza de Retiro, Inc.*, 417 B.R. at 640, citing *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 474 (3rd Cir.1998), and *In re Colorado–Ute Electric Assn., Inc.*, 120 B.R. 164, 176 (Bankr.D.Colo.1990). “Under 1104(a)(2) the court should consider 4 factors: (i) the trustworthiness of the debtor; (ii) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation; (iii) the confidence-or lack thereof-of the business community and of creditors in present management; (iv) the benefits derived by the appointment of a trustee, balanced against the costs of appointment.” *In re Plaza de Retiro, Inc.*, 417 B.R. at 640 (citing *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 168 (Bankr.S.D.N.Y.1990) (citations omitted)).

33. “Finally, the decision to appoint a trustee is fact intensive and must be made on a case by case basis.” *In re Plaza de Retiro, Inc.*, 417 B.R. at 640. The Court’s task is to determine whether the totality of the circumstances warrant appointment of a trustee. *Id.*

A. Cause Exists To Appoint A Chapter 11 Trustee Because The Debtors Have Engaged In Fraud, Dishonesty and Gross Mismanagement, And Have Demonstrated Incompetence In Their Management Of The Debtors’ Bankruptcy Estates, And The Appointment Of A Credible Chapter 11 Trustee Is In The Best Interests Of Creditors.

1. The Court Should Appoint A Trustee Because The Debtors Failed To Disclose Or Accurately Describe The Debtors’ Business Dealings With Mr. Ciardo.

34. The Debtors have done their best to hide an illegal business from this Court. On

December 28, 2014, a day before filing for bankruptcy, the Debtors knowingly entered into a lease and purchase option agreement for the purpose of developing a marijuana business on the Camp Bird property. While the December 2014 Lease is silent on the issue of marijuana cultivation, subsequent communications leave absolutely no doubt as to its purpose. In early March 2015, Mr. Ciardo requested an amendment to the December 2014 Lease wherein, among other things, the Debtors would acknowledge that the property was going to be used for marijuana cultivation. While the parties thereafter entered into an Amendment to the lease on March 16, 2015, there was no mention of the marijuana business in the Amendment. This appears to have been a deliberate decision by the Debtors to continue to hide the purpose of the December 2014 Lease.

35. The Debtors' Disclosure Statement of March 27, 2015 falsely characterized the December 2014 Lease as being a "Water Lease." The Debtors knew that the primary purpose of the lease was to provide property upon which to grow marijuana, with water use being a collateral or adjunct purpose. The Debtors further *falsely represented* in their Disclosure Statement that they were "in the process of finalizing an Amendment to the Water Lease that is expressly subject to the Bankruptcy Court's approval." The Debtors had executed the Amendment on March 16, 2015, eleven days prior to the filing of the Disclosure Statement. The Debtors never sought to submit the Amendment to the Bankruptcy Court for approval, or accurately describe or disclose their dealings with Mr. Ciardo in their Disclosure Statement or in any other document on file with the Court.

36. CBCI has also failed to disclose to this Court that it appointed Mr. Ciardo and Mr. Dodd as its agents to obtain a marijuana cultivation license *on CBCI's behalf*. The agency authorization forms signed by Mr. Butters for CBCI expressly state that the agency appointment is for a permit on behalf of the principal, not the agent, and contains a certification by Mr. Butters that he has read the entire application.

37. The Debtors have also falsely stated in their motion to sell personal property that “[t]he Purchaser is not an insider of the Debtors, and he has no affiliation with the Debtors’ principals”. Sale Motion, ¶11 [Doc 202]. Mr. Ciardo was affiliated with the Debtors because he was appointed as CBCI’s agent for purposes of obtaining a marijuana license, made a payment to Mr. Blum personally in order to secure the Amendment to the December 2014 Lease, was permitted unsupervised access to the Camp Bird property and Caldera’s equipment, and was given an inside track to develop a bid to purchase the equipment.

38. As recently as December 14, 2014, the Debtors knowingly submitted to this Court a document containing material misrepresentations. The Debtors’ Amended Agreement for Sale of Equipment to Mr. Ciardo attaches a copy of the November 2015 Lease which contains representations and warranties that neither Mr. Ciardo nor his designee “intends to engage in any activity that is illegal under federal law.” Mr. Ciardo is obviously a principal in the marijuana deal and his sham lease and sub-lease arrangement do not fool anyone.

38. The Debtors entered into a commercially unreasonable deal with Mr. Ciardo. The November 2015 Lease provides that Mr. Ciardo may lease 29 acres for \$5,000 per month. The monthly rent bears no correlation to the purported \$5,000,000 purchase price. This raises serious questions about the true nature of the business relationship between the Debtors and Mr. Ciardo, especially considering the Debtors’ mischaracterization of the deal as a “Water Lease”, the concealment of the true nature and purpose of the deal, the repeated failures to seek Court approval of the deal, CBCI’s appointment of Mr. Ciardo and Mr. Dodd as its agents in order to obtain marijuana permits from Ouray County, the misrepresentations to Ouray County that Mr. Ciardo has no financial stake in the deal, and the Debtors’ false statements that they have no affiliation with Mr. Ciardo.

39. The undisputed evidence demonstrates that there was an intentional scheme to hide an illegal business from this Court. The Debtors’ mischaracterizations, misrepresentations,

concealments, and failures to disclose as set forth above constitute cause to appoint a Chapter 11 trustee in these cases.

2. *The Court Should Appoint A Trustee Because The Debtors Have Subjected The Debtors' Estates To Potential Administrative Claims By Promising Water Rights To The Lessee That The Debtors Cannot Deliver.*

40. The Debtors' lease agreements with Mr. Ciardo promise the delivery of water rights that the Debtors cannot legally deliver. (Goldberg Decl., Ex. A, pp. 0005, 0013; Ex H, p. 0106). The Debtors accepted Mr. Ciardo's money for a lease and water rights that they are legally prohibited from delivering. In addition to expending estate funds in connection with a business venture whose very purpose cannot be accomplished, the Debtors have subjected the estates to a potential claim by Mr. Ciardo for fraudulent misrepresentation.

41. Moreover, the Debtors have failed to move to seek the approval of the Amendment, or any other lease with Mr. Ciardo, which the Debtors failed to disclose to the Court. *See* 11 U.S.C. § 363(b), providing that Court approval is required for any transaction outside the ordinary course of business. Clearly, the lease of property to Mr. Ciardo for the purpose of cultivating marijuana is a transaction outside the ordinary course of the Debtors' mining business.

3. *The Court Should Appoint A Trustee Because The Debtors Permitted A Convict to Cause Damage and to Steal.*

42. The Debtors have allowed and failed to report theft of property from the Camp Bird Mine site, which is yet another reason why a trustee should be appointed in these cases. On or about March 30, 2015, Caldera discovered that certain of its personal property had been stolen from the Camp Bird mine site and that various fixtures had been damaged. Mr. Ciardo appears to have been the thief because (i) he and his gang were the only persons who gained access to the property between December 2014 and March 30, 2015 when Caldera discovered and reported the

theft; (ii) he took photographs of equipment a few days before the theft was discovered; (iii) the Debtors' President, Mr. Butters, upon being initially told about the theft, blurted out that the lessee was told that they weren't supposed to take anything; and (iv) Mr. Ciardo is a convicted felon with a history of breaking the law. The Debtors never reported the theft to the Bankruptcy Court.

4. *The Debtors' Secret Business Dealings With Mr. Ciardo Violates The Controlled Substances Act (CSA) And Constitutes Cause For The Appointment Of A Trustee*

43. Federal bankruptcy decisions hold that a debtor's dealings with a marijuana business constitute unclean hands and bad faith conduct warranting conversion or dismissal. *In re Rent-Rite Super Kegs West Ltd.*, 484 B.R. 799 (D. Colorado 2012) (cause existed for converting case to chapter 7 or dismissal when debtor leased property to a marijuana business); see also *In re Arenas*, 514 B.R. 887 (D. Colorado 2014) (bankruptcy trustee could not lawfully administer estate that derived income from marijuana growing). The same reasoning should apply to the less draconian remedy of the appointment of a trustee.

44. The Debtors' lease and option to purchase agreement with a marijuana business evidences gross mismanagement because (i) the business could be shut down by the federal government long before the option to purchase the property is exercised or any purchase payments made, and (ii) the Mining Safety and Health Administration ("MSHA") and/or the Colorado Division of Reclamation Mining & Safety ("DRMS") could terminate the mining permit due to an illegal or unauthorized use of the property.

i. The knowing and intentional lease of property for marijuana growing

45. The Debtors violated federal law by knowingly leasing property to a marijuana business. Under §856 of the CSA it is a federal crime to "manage or control any place,...as an owner,...and *knowingly and intentionally rent, lease*, profit from, or make available for use, with or without compensation, the place for *the purposes of unlawfully manufacturing*, storing,

distributing, or using a controlled substance.” 21 U.S.C. §856(a)(2) (emphasis added).

46. While the Debtors may contend that they have not violated any laws because no marijuana growing has yet occurred, both the Debtors and their co-conspirators may be charged with an attempted violation of the CSA under 21 U.S.C. §846 (“Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”)

47. Furthermore, even if the Debtors disclaim any participation in the marijuana business, they may be charged as aiders and abettors under 18 U.S.C. §2(a) by knowingly leasing the real property for the marijuana business (“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal”).

ii. CBCI’s’s application for its own marijuana permit using a convicted felon as its agent

48. CBCI’s application for its own Colorado state marijuana permit is a separate violation of the CSA. “Under the CSA, any person *who seeks to manufacture*, distribute, or possess a Schedule I controlled substance must apply for and obtain a certificate of registration from the Drug Enforcement Agency (DEA).” *Monson v. DEA*, 522 F. Supp2d 1188, 1192 (D.N.D. 2007) (emphasis added). Marijuana is classified as a Schedule I controlled substance. 21 U.S.C. §812 Schedule I (c)(1). There is no evidence that CBCI has obtained a federal license or disclosed the obtaining of a license to the Court.

49. In addition, CBCI’s application for a Colorado state permit using a convicted drug felon as its agent is a violation of Colorado state law. See C.R.S. §12-43.3-307 (“(1) A license provided by this article shall not be issued to or held by (h)... a person who at any time has been convicted of a felony pursuant to any state or federal law regarding the possession,

distribution manufacturing, cultivation or use of a controlled substance”). Mr. Ciardo’s ruse of entering into a lease individually, and then sub-leasing to the marijuana business LLC, does not rectify the violation.

iii. The risk of closure or termination of mining permits

50. The Debtors’ transaction with Mr. Ciardo constitutes gross mismanagement because of the inherent risks associated with the marijuana business because of violations of federal law. Ouray County requires applicants for a marijuana cultivation license to acknowledge that federal officials could prosecute at any time: “*Applicant affirms that he/she understands that marijuana is an illegal drug under federal law ... that federal officials could prosecute applicant or otherwise enforce federal law at any time ...*” (emphasis added).

51. Furthermore, the presence of illegal narcotics on the property will likely cause the loss of all federal and state mining permits. Every mine is governed by the Federal Mine Safety & Health Act of 1977. See Public Law 91-173, Sec. 4 (“[e]ach coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this Act.”). The regulations governing mines prohibits narcotics in and around mines. See 30 CFR §56.20001 (“[i]ntoxicating beverages and narcotics shall not be permitted or used in or around mines.”). The Colorado state regulators may be able to enforce the restrictions on the water rights and land use rights, which are restricted to mining activities, to achieve the same goal. The highest and best use of the property will thus be destroyed.

IV. CONCLUSION

52. Given the Debtors’ concealment of their true relationship with Mr. Ciardo and his cannabis business plan for the Camp Bird property, their failure to obtain approvals from the Bankruptcy Court for outside the ordinary course transactions, the undisclosed relationship between Mr. Ciardo and Mr. Blum, the damage to and theft of property under the Debtors’

control, violations of federal law, and gross mismanagement of the estates, a trustee must be appointed.

DATED: December 16, 2015 **LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.**

By: /s/ Martin J. Brill
Martin J. Brill
Krikor J. Meshefejian
Counsel for Creditors Caldera Mineral Resources, LLC and Caldera Holdings, LLC, Pro Hac Vice Application Approved

and

AFFELD GRIVAKES ZUCKER LLP

By: /s/ Christopher Grivakes
Christopher Grivakes
Counsel for Creditors Caldera Mineral Resources, LLC and Caldera Holdings, LLC, Pro Hac Vice Application Approved

and

M. Darin Hammond – Bar No. 6741
SMITH KNOWLES, P.C.
2225 Washington Blvd., Suite 200
Ogden, UT 84401
Telephone: (801) 476-0303
Facsimile: (801) 476-0399
dhammond@smithknowles.com

*Local Counsel for Creditors Caldera Mineral Resources, LLC
and Caldera Holdings, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 17, 2015, I caused a true and correct copy of the foregoing **EMERGENCY MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104** to be electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system, as noted below:

- **Martin J. Brill** mjb@lnbyb.com
- **Christopher D. Bryan** cbryan@garfieldhecht.com, rortell@garfieldhecht.com
- **James Vincent Cameron tr** Vince.Cameron@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- **David Dain** David.Dain@usdoj.gov, katherine.tribbett@usdoj.gov
- **M. Darin Hammond** dhammond@smithknowles.com, astevenson@smithknowles.com
- **Andrew V. Hardenbrook** ahardenbrook@swlaw.com, jpollard@swlaw.com;docket_slc@swlaw.com
- **Kristopher C. Kleiner** kris.kleiner@nortonrosefulbright.com, cecil.kennedy@nortonrosefulbright.com
- **Peter J. Kuhn tr** Peter.J.Kuhn@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- **David E. Leta** dleta@swlaw.com, wkalawaia@swlaw.com;csmart@swlaw.com
- **John B. Lyman** john.lyman@usdoj.gov, Katherine.Tribbett@usdoj.gov
- **John M. Macfarlane** jmacfarlane@fabianvancott.com, aclark@fabianvancott.com
- **Krikor J. Meshefejian** kjm@lnbyb.com
- **Douglas J. Payne** dpayne@fabianvancott.com, mdewitt@fabianvancott.com;smcnett@fabianvancott.com
- **Daniel D. Price** daniel.price2@usdoj.gov, emily.goodman@usdoj.gov
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov

/s/ Stephanie Reichert

Stephanie Reichert